

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

STEPHEN McCOLLUM, *et al.*,
Plaintiffs,

v.

BRAD LIVINGSTON, *et al.*,
Defendants.

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CIVIL ACTION NO. 3:12-CV-02037

**DEFENDANT TDCJ'S OPPOSED MOTION FOR *IN CAMERA* REVIEW OF
PRIVILEGED DOCUMENTS**

Defendant, The Texas Department of Criminal Justice, by and through the Attorney General for the State of Texas, files this defendant Texas Department of Criminal Justice's Motion for *In Camera* Review of Privileged Documents. In support thereof, defendant respectfully offers the following:

**I.
THE PRIVILEGED DOCUMENTS**

A. Plaintiffs' Request

Plaintiffs are seeking the following records from the Texas Department of Criminal Justice. Specifically they are seeking the Joint Morbidity and Mortality Committee reviews conducted by the Correctional Managed Health Care Committee ("CMHCC") regarding the following individuals.¹ "Defendants have submitted the following reports under seal to this court. Plaintiffs have been provided a list."

¹ Per the Court's request, Defendants have submitted the requested reports to the Court's chambers via overnight delivery.

A. James Shriver (D.O.D. August 8, 2007)
B. Dionicia Robles (D.O.D. August 13, 2007)
C. Kelly Marcus (D.O.D. August 12, 2011)
D. Alexander Togonidze (D.O.D. August 8, 2011)
E. Charles Cook (D.O.D. August 8, 2011)
F. Michael Martone (D.O.D. August 8, 2011)
G. Robert Webb (D.O.D. August 4, 2011)
H. Thomas Meyers (D.O.D. August 3, 2011)
I. Kenneth Wayne James (D.O.D. August 13, 2011)
J. Douglas Hudson (D.O.D. July 25, 2011)
K. Daniel Alvarado (D.O.D. August 20, 2011)
L. Rodney Adams (D.O.D. August 3, 2012)
M. Albert Hinojosa (D.O.D. August 27, 2012)
N. Larry Gene McCollum (D.O.D. July 27, 2011)

B. Joint Morbidity and Mortality Committee

Texas Government Code section 501.150 created the CMHCC to improve access to quality health care while containing cost by maximizing the use of the state's medical schools. The CMHCC consists of nine members including representatives of the Texas Department of Criminal Justice, the University of Texas Medical Branch, Texas Tech University Health Sciences Center, and others appointed by the governor. See D.E. No. 89, Exhibit B, affidavit of Dr. Owen Murray, Vice-President of Offender Services at the Texas Department of Criminal Justice at Galveston – Correctional Managed Care.

Pursuant to Texas Government Code § 501.150, the CMHCC has established a procedure for monitoring the quality of care delivered by the health care providers. To monitor the quality of care, the CMHCC utilizes several joint committees of its members, including a Joint Morbidity and Mortality Committee ("Joint M & M committee"), which reviews the circumstances and records of TDCJ offenders' deaths.

Plaintiffs seek copies of documents related to the CMHCC (Joint M&M Committee). To the extent plaintiffs seek testimony from TDCJ employees about Joint M&M committee reports or any subsequent peer review materials, Texas statutory law prohibits TDCJ from disclosing

such medical committee records without a court order. TEX. OCC. CODE § 160.007(a). Accordingly, these records cannot be released unless and until a judge makes a preliminary finding that the medical peer review committee's proceedings, records, or communications are relevant to a civil rights action brought under 42 U.S.C. § 1983. TEX. OCC. CODE § 160.007(b).

Pursuant to Texas statutory law, this committee's proceedings are confidential and privileged and are not subject to court subpoena. TEX. HEALTH & SAFETY CODE § 161.032. Further, to the extent plaintiffs seek testimony from TDCJ medical professionals or physicians about the contents of committee meetings, Texas statutory law prevents these employees from discussing Joint M&M Committee proceedings without the protection of a court order which finds the Texas statutory privilege to be inapplicable in the case at issue and directs TDCJ to provide testimony regarding any knowledge it may possess regarding such proceedings.

Moreover, Texas statutory law declares nursing peer review records to be privileged and confidential and not subject to subpoena or discovery in any civil matter. TEX. OCC. CODE § 303.006(a)-(e). This law prohibits TDCJ from disclosing or discussing such peer review documents without the protection of a court order finding that the state law privilege does not apply and that the records must be disclosed pursuant to the court's authority. Without the requisite order, any disclosure and discussion of the privileged documents by TDCJ or its employees would amount to violations of Texas statutory law.

Accordingly, these nursing peer review records also cannot be released unless and until a judge makes a preliminary finding that the medical peer review committee's proceedings, records, or communications are relevant to a civil rights action brought under 42 U.S.C. § 1983. TEX. OCC. CODE § 160.007(b).

**III.
CONCLUSION**

TDCJ requests that the court rule on its assertions of privilege with respect to Plaintiffs' request for medical morbidity and mortality reviews records. Accordingly TDCJ asks this Court to review these documents *in camera* to make the threshold determination of relevancy at this time and to rule on TDCJ's assertions of privilege regarding these same reports.

Respectfully submitted,

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**ATTORNEYS FOR DEFENDANT
TEXAS DEPARTMENT OF CRIMINAL
JUSTICE**

NOTICE OF ELECTRONIC FILING

I, **BRUCE R. GARCIA**, Assistant Attorney General of Texas, certify that I have electronically submitted for filing **Texas Department of Criminal Justice's Opposed Motion for *In Camera* Review of Privileged Documents** to the Court, on April 14, 2014 in the Northern District of Texas, Dallas Division.

/s/Bruce R. Garcia
BRUCE R. GARCIA
Assistant Attorney General

CERTIFICATE OF CONFERENCE

I, **BRUCE R. GARCIA**, do certify that I spoke with Scott Medlock and he is opposed to the granting of this motion. I conferred with all other counsel and they are unopposed to the granting of this motion.

/s/Bruce R. Garcia
BRUCE R. GARCIA
Assistant Attorney General

CERTIFICATE OF SERVICE

I, **BRUCE R. GARCIA**, Assistant Attorney General of Texas, do hereby certify that a true and correct copy of the above and foregoing **Texas Department of Criminal Justice's Opposed Motion for *In Camera* Review of Privileged Documents** has been served by placing same in the United States Mail on this the 14 day of April, 2014, addressed to:

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/s/Bruce R. Garcia
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